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o 1238 of 84

Date of decision: 01/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

and

Hon'ble MR.JUSTICE H.R.SHELAT

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJ vs NATHA PITTAMBER

Appearance:

Shri K.P.Raval, ADDL. PUBLIC PROSECUTOR for Appellant
MS AMY YAJNIK for Respondent No.1

Coram : MR.JUSTICE R.R.JAIN and MR.JUSTICE H.R.SHELAT

ORAL JUDGEMENT (Per: Shelat.J)

The respondents were tried u/s 302, 307 r.w. sec. 34 of the Indian Penal Code in Sessions Case No. 57 of 1983, by the then learned Addl. Sessions Judge at Junagadh, after the case was committed to the court of Sessions at Junagadh, by the then learned Judicial Magistrate at Junagadh undergoing required procedure after the receipt of the charge-sheet at the conclusion of Police investigation, set to motion on the basis of F.I.R. lodged in the Police Station-Junagadh, and came to be acquitted, consequent upon which the State has preferred this appeal.

2. The facts leading to the prosecution to prefer this appeal may, in brief be stated. Dhanji alias Bhatuk Gokal, Babu Gokal and Chhagan Gokal are the brothers. They reside at Vijapur in the District-Junagadh. On 31st May 1983 in the evening all the three were at their house. At 8.30 p.m. , Vallabh Dahya went to Babubhai Gokalbhai, the complainant and informed that respondent no.3(original accused No.3) gushed out pan-jet on his clothes near the shop of Harubhai Darbar, and so his clothes were awfully dirtied, on being questioned the respondent No.3 also vituperated him ; and defied saying that he might bring the plucky, adventurous and mighty persons, he would fight back. Babu Gokal assuaged him saying that he would sermonise because he was to go to attend the meeting of Janak Munja, and respondent No.3 was likely to attend the same. Thereafter all the three brothers left their place to attend the meeting to be addressed by Janak Munja. When they reached near the house of Bachubhai Virji, all the three respondents were waiting there. The respondent No.1 was armed with a spear, respondent No.2 was armed with a scythe, and respondent No.3 was armed with a knife. Seeing them all the three respondents made a headlong attack coupled with ribaldry. The respondent No.3 gave a knife blow on the chest of Dhanji alias Bhatuk Gokal. Babu Gokal and Chhagan Gokal tried to rescue. At that time the respondent No.2 (ori. accused no.2) gave the spade blow on the right hand of Babu Gokal and also near the left ear. The respondent no.1(ori. accused No.1) gave the dharia blow to Chhagan Gokal on the back. They sustained bleeding injuries. Dhanji @ Bhatuk Gokal succumbed to the injuries. Hearing their shrieks, Yashram Jadav, Bharwad Gobar Bhalla, Darbar Kalubhai Bhanubhai and others rushed to the scene of offence. Seeing them the respondents ran away with the weapons they were having. Thereafter, injured Babu Gokal and Chhagan Gokal were taken to the Government hospital at Junagadh.

The police was informed. The PSI, Shri Parmar went to the hospital for verification. He recorded the complaint lodged by Babubhai Gokalbhai, which set the investigation to motion. After the investigation was over, a charge-sheet against the respondents was filed before the Court of the Judicial Magistrate, First Class at Junagadh. The learned Magistrate was not competent in law to hear and decide the case. He therefore, committed the case to the Court of Sessions at Junagadh, which came to be numbered as Sessions Case No. 57 of 1983. The then learned Sessions Judge, Junagadh assigned the case to the then Additional Sessions Judge, Junagadh for hearing and disposal in accordance with law. The charge(Exh.1) was then framed against the respondents. It was read over and explained to them. They pleaded not guilty and claimed to be tried submitting that after Vallabhbhai informed them Dhanjibhai, Babubhai and Chhaganbhai armed with scythe and stick as well as knife went to the place of respondent No.3. The respondent No.3 was then strategically called out knocking his doors and saying that he was called by the sarpanch. When he credulously came out, Dhanjibhai, Babubhai and Chhaganbhai caused injuries with the weapons they were having. The respondent No.3 then shouted for the help as he sustained bleeding injuries. He then rushed into his house to save him. Thus the complainant-party committed the wrong, but owing to political rivalry in the village, they were wrongly involved. The prosecution then adduced necessary evidence. At the conclusion of hearing, appreciating the evidence before him and considering the rival submissions, the learned Judge found that the prosecution had failed to establish the charge beyond reasonable doubt. He therefore, acquitted the respondents. Being aggrieved by the order of acquittal passed by the lower Court. the prosecution has preferred this appeal before us.

3. Mr. K.P. Raval, the learned Additional Public Prosecutor took us to the entire evidence so as to point out how the learned Judge below fell into error in reaching to the conclusions against the prosecution. According to him, the evidence of Babu Gokal was trustworthy, and was also supported by the evidence of other witnesses. There was no reason to discard the said evidence. The materials on record were sufficient to hold the respondents guilty. He also advanced few other grounds, but looking to the materials on record, and after careful scrutiny no doubt is left in our minds about the correct approach made by the lower court. The evidence of Babu Gokal in this case is material. The evidence of rest of the witnesses is not significant for the reason that they rushed to the scene of offence after the alleged incident was over. They have therefore no knowledge who is the aggressor, or the manner in which the incident happened. The learned A.P.P. also could not show us that the evidence of other witnesses was having any significant bearing, for the same was throwing light on the proposition. We

must therefore, focus on that evidence and the points having impaction on that evidence.

4> We will be dealing with a ground going to the root of the case. The respondent No. 3 was also injured which can be spelt out from the evidence of the Doctor(Exh.12) and his Certificate (Exh.15). The respondent No.3 sustained the following injuries.

"(1) Two- Incised wound over 1" x M. deep oblique at Renal Region Parasponal - Region (L) Bleeding ++

(2) S/c deep Incised wound(L) Hand 2 1/2" Transverse Between Thumb and 1st Finger in Palm Bleeding + admitted in M.S.W. for further treatment X-ray taken No.4294

1.6.83

Reported by F.T.S.

Nothing Abnormal detected.

Discharged by I/c ward doctor on 7.6.83.

Injury (1) and (2) possible by sharp cutting object."

He was treated initially on 1st June 1983 at about 00.35 a.m., i.e., about 4 hours after the incident and was then hospitalised for about 6 days. He was discharged on 7th June 1983. When respondent is found to have been injured and had been to the hospital soon after the incident, it was incumbent upon the prosecution to explain the injury on the person of respondent No.3. Of Course Babubhai Gokalbhai has in his evidence shrewdly eschewed from explaining about the injury making a statement that neither of them had caused any of the injuries to respondent No.3. That explanation in our view is not just, fair and sufficient but it is dubious. He had the reason and possibility to see the injuries being visible or discernible. At that time according to him there was a light - post and the lamp was burning, and so visibility was not impaired or obscured. According to him, he could see the hied and went into the house of Bachu Virji. At that time he could see that clothes of respondent No.3 were blood stained but could not see any injury. When he was able to see blood stained clothes he must have seen the injuries but he has shrewdly avoided to offer explanation submitting that no injury was caused. He has also not explained how clothes of respondent no.3 came to be blood stained. It appears that this witness was highly agitated because of challenge to their might from respondent no.3 and that too after respondent No.3 excruciated Vallabh Dahya by pan-jet amounting to roguery supplants justice. As per his belief the respondent No.3 was excursive. It may be stated that complaint is lodged against them by respondent No.3. In view of such facts when no satisfactory explanation is given what can be the effect thereof has been pointed out by the Apex Court in the case of Lakshmi

Singh & Ors. vs. State of Bihar AIR 1976 S.C.2263 . It is laid down that if the prosecution does not explain the injuries on the person of the accused, that assumes much greater importance. In that case it would amount to suppression of the genesis and the origin of the occurrence by the prosecution, and would render the evidence of the witnesses unreliable. Of course, it is made clear further that non-explanation of the injuries by the prosecution in all cases would not be fatal, but in order to get out from such effect of the law, the prosecution must show that injuries were minor and superficial or were not visible, or must show that the evidence on record is so clear and cogent and also independent, disinterested, consistent and creditworthy, which would outweigh the effect of the omission. In this case as stated above, no appealing explanation has been given. It may be because of the motivation flowing from above stated instigating facts. When we made query to the learned Additional Public Prosecutor Mr. Raval, to point out any appealing explanation if at all offered, he tried his best going through the record but failed to point out anything from the record tantamount to just and fair explanation about the injuries on the person of respondent No.3. When no explanation is offered, the omission on the part of the prosecution renders the evidence of Babubhai Gokalbhai untrustworthy, incredible because a possibility that origin and genesis having been suppressed by the prosecution is not ruled out.

5. We may also refer other aspect of the evidence of Babubhai Gokalbhai showing his evidence fishy and unreliable and attracting above referred decision. Initially, he narrated how the incident happened stating that after Vallabh informed him about gushing out of pan-jet making his clothes dirty, they decided to reprimand the respondent No.3 and left their place for attending the Janak Munja's meeting. Near the house of Bachhu Virji the respondents met them. They tried to bring the respondents to reason. The conceited respondents then reviled and attacked on them with lethal weapons as a result they were injured. In the cross examination he gives different picture of the manner in which incident happened. When there were about 10 ft, away, seeing them, the respondents expressed their intention to smite them. However, ignoring portend, they continued to proceed ahead dauntlessly, though they were unarmed and when they were close they were attacked. Thus about the manner in which incident happened different versions are advanced which indicates that improvements are made and truth is suppressed. No one would proceed ahead without weapon to defend when danger is imminent. Further it may be stated that in his complaint, more properly termed a statement he has not referred the pan-jet incident and the challenge about their might the respondent no.3 made. He has also not stated therein though he states before the court that he left for meeting and near the house of Bachhu Virji the respondents met them. He did not state about the light-post, and

also the fact that he tried to solace Vallabh. According to him, initially at 10.00 p.m. P.S.I. Parmar met him in the hospital; he stated about the incident , but it was not down taken in writing; but when P.S.I. Parmar again came at 11.30 p.m. his complaint was recorded. It seems to suppress the damaging facts he narrated earlier shrewed P.S.I. thought it fit to record later on giving time to improve his say. When Babu Gokal has made such improvements his evidence is not trustworthy, and credible' and so prudence dictates for independent corroboration which is wanting in this case. The evidence of Babubhai Gokal cannot also be termed independent or disinterested. He does not find any support from convincing and cogent evidence which could have been led, but for the reasons best known to the prosecution eschewed. Rest of the witnesses have stated the fact they came to know soon after they reached to the scene of offence. They reached after the incident was over, and so they do not know the origin and genesis of the incident. In our view, therefore, the learned Judge below was perfectly right in not placing any reliance on the evidence of Babu Gokal and holding that the prosecution failed to establish the charge beyond reasonable doubt. Under the circumstances, we do not see any justifiable reason to upset the judgment and order of acquittal passed by the lower Court. The appeal is devoid of merits and is required to be rejected. In the result, the appeal is hereby dismissed.

for correction plf.see original.